

William H. Schwarzschild, III – VSB No. 15274  
Paul S. Bliley, Jr. – VSB No. 13973  
WILLIAMS, MULLEN  
Two James Center, 17<sup>th</sup> Floor  
1021 East Cary Street  
Post Office Box 1320  
Richmond, Virginia 23218-1320  
Phone: 804.783.6448  
Fax: 804.783-6507  
[pbliley@williamsmullen.com](mailto:pbliley@williamsmullen.com)

Deborah H. Devan (Federal Bar # 01479)  
Neuberger, Quinn, Gielen, Rubin & Gibber, P.A.  
One South Street, 27<sup>th</sup> Floor  
Baltimore, MD 21202  
410-332-8522  
410-323-8594 facsimile  
Attorneys for CC Countryside 98, L.L.C.

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

IN RE:	)	Case No. 08-35653-KRH
	)	Chapter 11
CIRCUIT CITY STORES, INC., et al.	)	
	)	
Debtors	)	
	)	(Jointly Administered)

**OBJECTION OF CC COUNTRYSIDE 98, L.L.C. TO CURE AMOUNTS STATED IN  
DEBTORS' MOTION FOR ORDERS UNDER 11 U.S.C. SECTIONS 105, 363 AND 365**

**(1) APPROVING BIDDING AND AUCTION PROCEDURES FOR SALE OF  
UNEXPIRED NONRESIDENTIAL REAL PROPERTY LEASES FOR CLOSING  
STORES, (II) SETTING SALE HEARING DATE, AND (III) AUTHORIZING AND  
APPROVING (A) SALE OF CERTAIN NONRESIDENTIAL REAL PROPERTY  
LEASES FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, (B)  
ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED NONRESIDENTIAL  
PROPERTY LEASES, AND (C) LEASE REJECTION PROCEDURES**

CC Countryside 98, L.L.C. ("Countryside"), a creditor of Debtor, Circuit City Stores, Inc. ("Debtor"), and the lessor of certain leased premises located at 9950 Joliet Road, Countryside, Illinois, objects to the "Cure Amount" as stated in Exhibit B to the *Debtors' Motion for Orders Under 11 U.S.C. Sections 105,363 and 365 (i) Approving Bidding and Auction Procedures for the Sale of Unexpired Nonresidential Real Property Leases for Closing Stores, (ii) Setting Sale Hearing Date, and (iii) Authorizing and Approving (a) Sale of Certain Nonresidential Real Property Leases Free and Clear of Liens, Claims, and Encumbrances, (b) Assumption and*

*Assignment of Certain Unexpired Nonresidential Property Leases, and (c) Lease Rejection Procedures ("Motion")* and states as follows:.

1. The Motion states that a Cure Amount of \$15,838 is due to Countryside for pre-petition defaults. Countryside objects to the proposed cure amount because it is not calculated correctly under the Lease which requires rent to be paid in arrears on the last business day of each month.

2. According to the records of the entity that is servicing the loan on the leased premises, the Debtors have not basic paid rent due October 31, 2008 or the rent due November 28, 2008 which amounts must be paid as a condition of assumption of the Lease. The amount due for two months of base rent is \$107,053.33

3. The Debtors are obligated to pay for certain utility charges. Countryside reserves the right to add such charges, if any, to the Cure Amount, if unpaid by the Debtors and assessed by the utility companies against Countryside, including any taxes associated with utilities.

4. The monthly amounts paid by the Debtors for CAM are subject to adjustment for changes in underlying billing amounts for same. Adjustments are typically made late in the first quarter of the following year. The Debtor is obligated for any adjustment that result in a deficiency between the actual underlying amounts and the amounts paid toward them; any such deficiency must be included in the Cure Amount and Countryside reserves its claim for same.

5. The Cure Amount does not include payment of additional damages. Countryside may incur from assumption and assignment, including all "actual pecuniary loss" as described in 11 U.S.C. §365(b)(1)(B). This will include Countryside's attorneys' fees incurred

in or related to the bankruptcy filing and the lease defaults, in an amount that cannot be determined at this time. Any such "pecuniary loss" must be included in the Cure Amount and Countryside reserves the claim for same. At the present time attorneys' fees are \$15,500.00 which amount is claimed as part of the cure.

6. Countryside reserves claims for any additional amounts that may come due under the Lease before assumption of the Lease, and reserves its direct claim against the Debtor for same.

7. By asserting a Cure Amount, and objecting to the Debtors' stated amount for same, Countryside does not consent to the assumption of the Lease, or the assignment of same, nor does it waive its rights and remedies concerning assumption and assignment.

8. The Debtors, in a footnote, attempt to reserve the right to alter the Cure Amount by applying what is known as the "Billing Date" process rather than what is known as the "Accrual Date" process. *See Motion*, para. 13, fn. 4. The Debtors argue for the application of same in their "Omnibus Objection to the Motions . . . to Compel Allowance and Payment of Post-petition Rental Obligations . . ." *See* para. 17-18 and related provisions. Countryside reserves a corresponding right, if it so chooses, to apply the Billing Date process and objects to the establishment of a Cure Amount altering this right.

WHEREFORE, CC Countryside 98, L.L.C. objects to the Cure Amount stated in the Motion, states that the present cure amount is at least \$122,553.33, and reserves its claim and right to immediate payment of all amounts due under the Lease, and moves for such other and further relief as this court deems equitable and just as to this issue.

DATED this 10th day of December 2008.

CC COUNTRYSIDE 98, L.L.C.

By: /s/ Paul S. Bliley, Jr.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on December 9, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day by transmission of Notice of Electronic Filing generated by CM/ECF to those parties registered to receive electronic notices of filing in this case.

/s/ Paul S. Bliley, Jr.

William H. Schwarzschild, III – VSB No. 15274

Paul S. Bliley, Jr. – VSB No. 13973

WILLIAMS, MULLEN

Two James Center, 17<sup>th</sup> Floor

1021 East Cary Street

Post Office Box 1320

Richmond, Virginia 23218-1320

Phone: 804.783.6448

Fax: 804.783-6507

[tbliley@williamsmullen.com](mailto:tbliley@williamsmullen.com)

Deborah H. Devan (Federal Bar No. 01479)

Neuberger, Quinn, Gielen, Rubin & Gibber, P.A.

One South Street, 27th Floor

Baltimore MD 21202

410-332-8522

410-332-8594 facsimile

Attorneys for CC Countryside 98, L.L.C.

1692334v1